

HOPPER AND KANOUFF  
A PROFESSIONAL CORPORATION

1610 WYNKOOP STREET

SUITE 200

DENVER, COLORADO 80202-1196

(303) 892-6000

TELECOPY (303) 892-0457

JOHN P. KANOUFF  
THOMAS S. SMITH  
ALAN W. PERYAM  
WARD E. TERRY, JR.  
KIM I. McCULLOUGH  
DENNIS A. GRAHAM  
CAMERON J. SYKE  
DOUGLAS R. FERGUSON  
GENE R. THORNTON  
MICHAEL L. GLASER

VICTOR M. MORALES  
ANNITA M. MENOGAN  
HAROLD R. BRUNO, III  
K. HARSHA KRISHNAN  
LYNNE M. HANSON  
MICHAEL D. MURPHY  
GARRETT M. TUTTLE  
M. GABRIEL McFARLAND

OF COUNSEL

JAN B. DELBRIDGE-GRAHAM  
JOSEPH P. BENKERT  
ROBERT R. MARSHALL, JR.

GEORGE W. HOPPER  
(1930-1986)

December 8, 1995

VIA HAND DELIVERY

Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Mail Stop 1170  
Washington, D.C. 20554

RECEIVED

DEC 11 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: CC Docket No. 94-1: Comments on Second Further Notice of Proposed Rulemaking.

Dear Mr. Caton:

Transmitted herewith, on behalf of ICG Access Services, Inc. ("ICG"), are an original and four copies of its Comments in the above-referenced proceeding. By Order on Motion for Extension of Time (Decision DA95-2340), the Chief, Common Carrier Bureau, extended the deadline for filing initial comments until December 11, 1995.

In accordance with the Commission's Public Notice dated September 20, 1995, ICG has also provided two copies of its Comments to the Tariff Division, and one copy to the Industry Analysis Division and International Transcription Service.

Please acknowledge receipt of these Comments by date-stamping the enclosed copy marked "Stamp & Return" and returning it to our courier. Please direct questions and copies of all correspondence to the undersigned counsel.

Very truly yours,



Harsha Krishnan

Enclosure

cc: ICG Access Services, Inc.  
Chief, Tariff Division  
Industry Analysis Division  
International Transcription Service

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION** DEC 11 1995  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

*In the Matter of*

Price Cap Performance Review for Local  
Exchange Carriers

CC Docket No. 94-1

Treatment of Operator Services Under Price  
Cap Regulation

CC Docket No. 93-124

Revisions to Price Cap Rules for AT&T

CC Docket No. 93-197

**COMMENTS OF ICG ACCESS SERVICES, INC.**

HOPPER and KANOUFF, P.C.  
Michael L. Glaser  
K. Harsha Krishnan

1610 Wynkoop, Suite 200  
Denver, Colorado 80202-1196  
(303) 892-6000

December 8, 1995

Attorneys for ICG Access Services, Inc.

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
*Washington, D.C. 20554*

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**COMMENTS OF ICG ACCESS SERVICES, INC.**

ICG Access Services, Inc. ("ICG"), by its attorneys, hereby submits its Comments to the Second Further Notice of Proposed Rulemaking in CC Docket No. 94-1, adopted on September 14, 1995 and released on September 20, 1995 (the "*Notice*").<sup>1</sup> In support of its Comments, ICG respectfully states:

**I. Introduction**

ICG is an interstate and intrastate competitive access provider ("CAP"). CAPs, including ICG, offer their customers an alternative to the local exchange carriers' ("LECs") for a variety of telecommunications services. ICG operates competitive access networks serving over 32 markets and now serves more Tier II and Tier III markets (cities with a population between 250,000 and 2,000,000) than any other CAP in the United States. ICG has installed 13 high capacity digital switches throughout its networks that enable ICG to offer interstate transport and switched access services; as regulatory and competitive conditions permit, ICG intends to expand its service offerings, including intrastate switched services offerings.

As a general principle, ICG encourages the elimination of barriers to competition in telecommunications services. ICG observes, however, that the LECs still control access to

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<sup>1</sup>By Order on Motion for Extension of Time, the Chief, Common Carrier Bureau, extends the deadline for filing initial comments on the issues addressed herein until December 11, 1995.

essential facilities of the basic local exchanges, including those necessary to provide switched competitive access services. The LECs' control of bottleneck facilities gives the LECs a significant competitive advantage *vis-a-vis* emerging competitors in the switched access market. For example, in transport and switched access services, the LECs require competitors, such as ICG, to pay high charges for virtual collocation while the LECs do not impute such charges to their own competing service offerings. This practice must be corrected before full and fair competition in switched access services as envisioned by the Commission can be achieved. Moreover, the Commission has granted the LECs pricing flexibility for competing services in this market. Given the present competitive disparity, due to control of essential facilities and certain LEC practices, the Commission's elimination of regulatory constraints on the LECs at this time and under the prevailing conditions would not result in a "level playing field". In order to foster vigorous competition in the switched access services market, the Commission must specifically condition pricing flexibility for the LECs on just and reasonable access to local exchange bottleneck facilities and full interconnection with the LECs on just and reasonable conditions.

## **II. Discussion**

**ISSUE 1: Pricing Flexibility for New Services.** The *Notice* proposes a relaxed regulatory framework for new LEC service offerings. This proposed regulatory framework would divide LECs' new service offerings into two categories, Track 1 and Track 2. Track 1 services would retain existing tariff notice and cost support requirements while the Commission's proposal would significantly reduce the tariff notice and cost support requirements for Track 2 services. These requirements would apply to new services prior to their inclusion in the annual price cap tariff filing after the completion of the base year. The simplified treatment of Track 2 services will apply to certain LEC services and supposedly would reduce the Commission's administrative burden with respect to such services.

ICG suggests that the classification of a particular new LEC service as Track 1 or Track 2 initially should be based on the nature of the relevant market for the services rather than on the nature of the particular service. New services are usually offered within a particular market and compete against existing services within that market. If the LEC has market dominance or control of essential facilities needed for competitors' services, the LEC can affect conditions within that market to gain competitive advantage for its own services to be offered there. Thus, a new transport or switching service may not involve virtual collocation but the LECs' collocation rates will impact the competitiveness of that new service. Moreover, with a new LEC service, there will have been no opportunity for the Commission or affected parties to evaluate such service's rate structure and competitive consequences in the relevant market. Furthermore, the reduced notice and cost support requirements for Track 2 offering would further impede such analysis. While reduced regulatory burdens may encourage the implementation of new access services, hasty and inadequate review of new service offerings by LECs in non-competitive markets would allow the LECs greater opportunity for anti-competitive behavior, an opportunity the Commission must recognize and should foreclose in its proposal. ICG, therefore, advocates classifying new services based on the nature of the relevant market rather than the nature of the service.

ICG recognizes that certain new services offered within a non-competitive market may present no valid competitive issues. ICG proposes that with a Track 1 filing, the LEC could submit a petition requesting classification of the new service as Track 2; the reclassification as Track 2 would apply to subsequent tariff filings until inclusion into the price cap. The *Notice* proposes that LECs could file a petition for initial classification as a Track 2 service and the Common Carrier Bureau must act on that petition within 10 days. *Notice* at ¶ 48. ICG submits that the 10 day response period is too abbreviated to complete a useful analysis of a new LEC service offering, especially since the Commission and affected parties would lack familiarity with the new service. Moreover, the Commission and interested parties would

need to analyze the cost support information required under Track 1 before the new service should become effective. Without an adequate analysis of costs, a new LEC service should not be accorded Track 2 status. Thus, as a practical matter, the procedure proposed in the *Notice* actually would not reduce regulatory burdens on new LEC services, as is intended. A reclassification petition filed concurrently with the customary cost support information on a Track 1 service would allow the Commission and affected parties time to engage in a more considered evaluation of the competitive consequences of new LEC service offerings.

**ISSUE 11: Eliminating Barriers to Competition.** Section IV.C of the *Notice* recognizes that pricing flexibility or other regulatory relief for the LECs should be conditioned upon reducing entry barriers to competition. Generally, ICG agrees that this approach will encourage the LECs to unbundle their services and open their markets to competition. Elimination of legal and technological entry barriers (such as those described in *Notice* ¶ 108) is a necessary prerequisite for competition to develop in the access services market. The Commission's removal of such legal and technological impediments, however, would merely open the market to potential competition, and would not place new competitors on equal footing with the LECs. The LECs would retain their control of bottleneck facilities and dominant market power bestowed upon them by their former government monopoly. As even BellSouth recognized, incumbent LECs bring "enormous structural advantages to the competition in the form of a 'paid-for' infrastructure, name recognition, brand loyalty, consumer inertia, preferential access to data regarding the calling habits of its interconnecting competitor's customers, superior access to infrastructure, established regulatory/legislative relationships, etc." *Comments of BellSouth Europe to the European Commission's Green Paper on the Liberalisation of Telecommunications Infrastructure and Cable Television Networks* at 5 (March 15, 1995) ("*BellSouth European Comments*"). Thus, ICG submits that elimination of market entry barriers alone would not be sufficient to move prices towards costs in the interstate access market. Furthermore, the incumbent LECs' monopoly control

of bottleneck facilities allows them to charge "high interconnect prices designed to largely recoup the incumbent's past inefficiencies." *Id.* Therefore, actual provision of competing access services by competitors with full and complete interconnection of unbundled facilities at just and reasonable rates must *precede* any additional pricing flexibility and regulatory relief granted to the LECs as the Commission proposed in the *Notice*.

ICG strongly urges that the Commission require LECs to separate local bottleneck facilities, such as local loops and switching, from the provision of access services and offer such separated facilities on an unbundled basis to competitors at "wholesale rates" or rates based on the LECs' incremental costs. Through such "wholesale rates", LECs will recover their real cost of providing such bottleneck facilities. Long-run incremental cost pricing of interconnection adequately addresses cost causation concerns while stimulating LEC efficiency and promoting effective competition. *BellSouth European Comments* at 4-5 (citing *Arthur Andersen Study Prepared for the Commission of the European Community* (1994)). The Commission should even deliberate whether interconnection charges should only partially fund the local access loss: this approach will provide incentives for the LECs to improve efficiency in the provision of local access." *Id.*

Furthermore, the Commission should require that such "wholesale rates" be imputed to the LECs' own competing access services. Where the LECs have monopoly control of essential facilities, they have the ability and incentive to discriminate against competitors. Imputing the costs for bottleneck facilities to the LECs' own access services creates countervailing incentives. This approach is analogous to the Commission's Open Network Architecture concept, whereby the LECs must develop unbundled basic service elements for their networks, and impute the charges for such basic service elements their own enhanced services rates. The Open Network Architecture approach is intended to reduce the LECs' incentive to impose unwarranted charges upon competing enhanced service providers. The same approach should be applied in this case.

The use of separate LEC entities to provide bottleneck facilities and access services may be the most effective means of implementing this proposal. *See BellSouth European Comments* at 7 (best way to ensure neutral treatment for all service providers is to separate incumbent's infrastructure wholesale and retail units into different organizations under a holding company). By separating these entities, the company providing bottleneck facilities has less incentive and greater difficulty in discriminating in favor of the LEC affiliate. Moreover, separate subsidiaries makes it easier to determine that bottleneck service charges have been appropriately imputed. ICG recognizes, however, that separate subsidiary requirements increase regulatory and administrative burdens, so non-structural safeguards could be more appropriate. The Commission must balance all the relevant factors before deciding the best approach to ensuring that actual competition in the access market will develop and flourish.

**ISSUE 13: Relevant product markets.** The Commission derived the existing price cap service categories from the judgment of industry experts and after extensive analysis. These price cap service categories generally reflect cross-elasticities between LEC services. These categories were developed in a monopoly environment, however, and do not examine competitive consequences in one service category that may arise from price changes in another service category. While the existing price cap service baskets and categories are appropriate initial definitions of the relevant product markets, ICG believes that the Commission should not apply these service categories and definitions too rigidly in the case of competitive access services.

**ISSUE 14: Relevant geographic markets.** The zone-density pricing zones offer a reasonable measure for geographic market for assessing competition. These zones were established by the LECs based on traffic density and represent arenas of probable competition. While pricing flexibility and regulatory relief allow the LECs greater competitive response, they are only appropriate where competition actually exists. Thus, these density zones are



an appropriate unit for assessing actual competition and awarding regulatory relief. ICG suggests however that different zone density plans for each service would be unwieldy. A single zone configuration plan would better serve the purpose of assessing real competition, and therefore ICG recommends that such a configuration be implemented. However, since the existing zones were originally based on trunking basket characteristics, some adjustments of the zones would be appropriate. The Commission should authorize regulatory relief and pricing flexibility for the LECs only in those geographic zones in which the LEC has demonstrated that actual competition exists, based on full interconnection with unbundled facilities available at just and reasonable rates.

**ISSUE 15: Streamlined Regulation.** The *Notice* also requests comments about how to determine the existence of sufficient competition to warrant streamlined regulation of the LECs. The *Notice* refers to objective factors from which it may assess whether actual competition exists in the access market. Such factors include demand responsiveness, supply responsiveness and market share. If demand responsiveness is established as an important factor in determining the level of competition in a given market, the *Notice* assumed that services comparable to those offered by the LECs are available to users, a significant number of users are able to evaluate the full range of options, and users actually exercise alternatives to the LECs' access services. ICG notes that in the telecommunications services market, demand for services is stimulated by factors other than price. Non-price factors such as quality, ease of use and consumer awareness and familiarity will affect demand for services. Moreover, LEC access, transport and switching services are generally purchased by other service providers, not directly by consumers. Furthermore, demand for telecommunications services in general is constantly increasing. Where a market is not fully competitive, demand responsiveness may therefore be masked by other factors, so demand responsiveness should not be a primary determinate of actual competition. ICG believes that supply responsiveness is a better indicator of actual competition in a given market since that indicator measures

whether competitors are able to compete with the dominant provider. Finally, market share, particularly significant changes in relative market share, would provide another objective measure of the competitive forces in a given market. Similarly, pricing behavior where the LEC prices services near the pricing floor evidences price competition in a given market.

### **III. Conclusion**

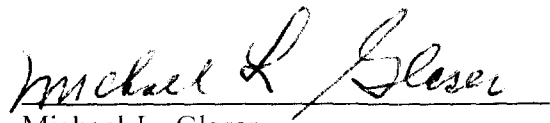
ICG views the elimination of barriers to competition, including regulatory relief for the LECs, as required for the development of a truly competitive telecommunications market. However, actual competition is a necessary prerequisite to regulatory relief and pricing flexibility for the LECs. The Commission must not grant such regulatory relief unless there is full interconnection with unbundled facilities available to competitors from the LECs at just and reasonable rates. Otherwise the LECs can utilize their dominant market power to disadvantage competitors and thwart competition, contrary to the Commission's purposes and the public interest. In order to foster vigorous competition in the access services market, pricing flexibility for the LECs must be conditioned upon just and reasonable access to bottleneck facilities, on the basis described above.

Respectfully submitted,

**ICG ACCESS SERVICES, INC.**

December 8, 1995

By:



Michael L. Glaser  
K. Harsha Krishnan

HOPPER and KANOUFF, P.C.  
1610 Wynkoop St., Suite 200  
Denver, Colorado 80202  
(303) 892-6000  
Its Attorneys

## CERTIFICATE OF MAILING

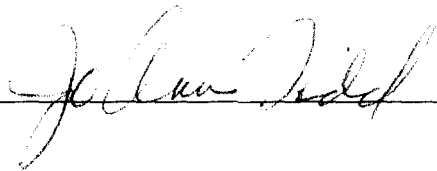
I hereby certify that a true and correct copy of the foregoing **COMMENTS** deposited in the U.S. Mail addressed to the following:

Chief, Tariff Division  
Federal Communications Commission  
1919 M Street, Room 518  
Washington, D.C. 20554

Industry Analysis Division  
Federal Communications Commission  
1919 M Street  
Washington, D.C. 20554

International Transcription Service  
1919 M Street, NW, Room 246  
Washington, D.C. 200554

December 8, 1995



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